IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3110 of 1991
with
CIVIL APPLICATION No 5010 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHOKKUMAR B DABHI

Versus

COLLECTOR

Appearance:
MR AJ YAGNIK for Petitioner
MR VM PANCHOLI, AGP for Respondent

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 04/05/2001

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution filed in the year 1991, the petitioner had initially prayed for a writ for quashing and setting aside the action of the respondent in not giving employment to the petitioner on any of the posts in

Class-IV cadre, preferably on the post of Driver, pursuant to the assurance given to the petitioner as per Annexure "A" to the petition, as being bad in law, illegal, arbitrary, discriminatory, violative of Articles 14 and 16 of the Constitution and also against the principle of promissory estoppel. The claim was made on the ground that the petitioner's land was acquired for the capital project at Gandhinagar.

2. After issuing notice to the respondent, this Court admitted the petition on 11.7.1991 and fixed it for final hearing in August 1991. However, it appears that the petition could not be taken up for final hearing for about 10 years and, therefore, the petitioner moved the above numbered Civil Application for getting allotment of a shop on the strength of the Government Resolution dated 14.8.1987. The petitioner has also relied on the judgment dated 13.10.2001 of this Court in Special Civil Application No. 8085 of 2000 for a similar relief.

3. The facts leading to filing of the petition, briefly stated, as averred in the petition, are as under:-

The petitioner's grandfather was holding a piece of land admeasuring 3 acres and 14 gunthas of Khata No. 1105 in village Pethapur, District Gandhinagar. In the year 1962, the Government acquired the said land so as to develop and build the capital for the State of Gujarat at Gandhinagar and a scheme was floated by the respondent to the effect that if the land of the ownership of any person had been acquired, such a person would be given alternative plot of land for residence and over and above providing alternative plot of residence, either a shop or employment in the Government of Gujarat will be provided. The grandfather of the petitioner had two sons - father of the petitioner and uncle of the petitioner i.e. brother of the father of the petitioner. Neither the father of the petitioner or the sons of the uncle of the petitioner or any other brother of the petitioner has claimed the benefit of the aforesaid scheme nor even given the benefit of the aforesaid scheme. Thereafter, the petitioner was issued an identity card to the effect that the persons affected due to Capital Formation scheme (Patnagar Yojna), Gandhinagar pursuant to acquiring the land admeasuring 3 acres and 14 gunthas of village Pethapur from Khata No. 1105, those persons certified under the said identity card/certificate are entitled to claim the benefit of service and the respondent has further certified that the petitioner is entitled to the benefit of Government service as an affected person.

According to the petitioner, under the aforesaid scheme and as per the identity card given by the respondent, the petitioner is entitled for being employed as a class-IV servant and, therefore, the petitioner approached the respondent on various occasions, requesting the respondent to give employment to the petitioner. The petitioner also made various representations, but the respondent did not give any positive response to the representation made by the petitioner. Therefore, the petitioner approached this Court for the aforesaid reliefs.

4. In response to the notice of Rule issued to the respondent on 11.7.1991, affidavit in reply dated 9.9.1991 is filed by Mr NS Upadhyay, I/c. Mamlatdar, Township, Collector Office, Gandhinagar stating that as per the scheme of the Government, the person who has been so identified for the purpose of the said scheme is given identification card in this regard and the name of such person is sent to Employment Office and the name of such person is sent through Employment Office as and when vacancy arises in the Government employment. It is further submitted in the reply affidavit that the land of the grandfather of the petitioner was acquired for the capital project and as a result thereof at the request of the father of the present petitioner, initially the brother of the present petitioner Ranjitsinh Baldevji Dabhi was identified for the purpose of the said scheme. However, subsequently at the request of the petitioner's father, the name of the present petitioner was also identified for the purpose of the said scheme. It is further submitted that in the past the name of the present petitioner was considered preferentially for the purpose of the said scheme. However, he was not found suitable for the concerned employment and as a result thereof, he was not offered any employment and that in future also the name of the present petitioner will definitely be considered preferentially as and when vacancy in the Government employment arises and if as per the scheme framed by the Government the petitioner is otherwise fit for employment in Government service, his name would be definitely considered preferentially.

5. As stated earlier, since the petition could not be taken up for final hearing for 10 years, the petitioner has filed Civil Application No. 5010 of 2001 for a direction to the Collector to allot the petitioner with a shop as per the scheme formulated by a resolution of the Department of Road and Building, Government of Gujarat dated 13.8.1987 (Annexure A1) within a period of two months. It is also stated in the application that

the petitioner has lost the hope of getting any employment with the Government and that the petitioner would be satisfied with the allotment of a shop as per the above Government Resolution.

6. At the hearing today, the learned counsel for the petitioner has submitted that in a similar case being Special Civil Application No. 8085 of 2000, by order dated 13.10.2000, this Court directed the Collector and the Government of Gujarat to allot a shop to an identically situated and affected person under the scheme based on the resolution of the Government of Gujarat dated 14.8.1987 within two months from the date of receipt of the writ of this Court and accordingly the petitioner in that petition has already been provided with a shop in Gandhinagar. The learned counsel has further submitted that, in the instant case, the petitioner's first preference was for employment in Government service and his second preference was for a shop in Gandhinagar. However, till date the applicant has not been provided with any employment inspite of the statement made in the reply affidavit that the petitioner's case would be definitely considered preferentially as and when vacancy in the Government employment is available. It is, therefore, submitted that the petitioner would be satisfied if he is allotted a shop in Gandhinagar on similar lines as per the direction contained in the aforesaid order dated 13.10.2001 of this Court in Special Civil Application No. 8085 of 2000.

7. In response to the notice of Rule issued on the Civil Application, no affidavit in reply is filed by the respondent. However, Mr Pancholi, learned AGP appearing for the respondent fairly states that since the petitioner's grand father's land was acquired for the capital project at Gandhinagar and since the petitioner or his father/uncle or his brothers/cousin brothers are not given any employment in Government service on the basis that they are land losers, there cannot be any objection from the respondent against issuance of direction similar to the one issued in Special Civil Application No. 8085 of 2000 wherein also the petitioner had lost his land for the capital project at Gandhinagar.

8. In view of the above discussion, the petition is partly allowed. The respondent is directed to consider the petitioner's case for allotment of a shop to the petitioner at Gandhinagar in accordance with the scheme contained in the Government Resolution dated 14.8.1987 as early as possible and preferably within two months from

the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier.

Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

9. The main petition as well as the Civil Application are accordingly allowed in the aforesaid terms with a clarification that upon allotment of a shop in accordance with the scheme contained in the Government Resolution dated 14.8.1987, the petitioner's claim for employment in Government service shall not survive.

(M.S. Shah, J.)

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